



NIFA GAP FINANCING PROGRAM APPLICATION & PROGRAM GUIDELINES

State of Nebraska

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OVERVIEW & CONTACT INFORMATION

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GRANT SCHEDULE	
Letter of Intent Due Date	N/A
Application Due Date	February 15
Anticipated Award Date	March 30
Contract Term	Two years

The Nebraska Investment Finance Authority (NIFA) – Low Income Housing Tax Credit (LIHTC) Pandemic Gap Funding program, funded through LB1014, is authorized and further described within Neb. Rev. Stat. §§ 58-201 to 58-272.

Application Portal and Grants Management System

To administer the NIFA - LIHTC Pandemic Gap Funding Program, the Nebraska Department of Economic Development (DED) uses a grants management system (GMS), AmpliFund. The **GMS User Guides**, with instructions for accessing and using the system to apply for or implement a federal grant, along with other resources, are available on DED’s website: <https://opportunity.nebraska.gov/amplifund>.

Special Notices/Announcements

- As needed

RECORD OF CHANGE

Find the Version identifier on the cover page of this document. Summary of Changes includes a brief description of the revisions.

Version	Date	Summary of Changes
1.1	08/26/2024	<ol style="list-style-type: none">1. Addition of loan closing costs in Section 7, Guidelines and Award Management
1.2	2/26/25	<ol style="list-style-type: none">1. Revised language regarding loans in Section 4 Grant Amounts2. Revised language regarding reporting during construction in Section 7, Guidelines and Award Management3. Removed Asset Management Fee in Section 7, Guidelines and Award Management4. Removed specific date references related to timelines throughout the document

1 INTRODUCTION

With the passage of LB1014, the Nebraska Legislature approved \$20.5 million (\$10.5 million in FY2021-22 and \$10 million in FY2022-23) for the development of affordable housing units eligible for the federal four (4) and nine (9) percent Low Income Housing Tax Credit program.

2 ELIGIBILITY

Eligible applicants will include any Nebraska Investment Finance Authority (NIFA) Low Income Housing Tax Credit (LIHTC) project that was awarded LIHTC in 2020 or 2021 and has a gap in funding as a result of construction cost increases due to the Covid pandemic. The funds will be utilized to close any gaps in funding and allow the development to move forward towards completion of construction. Should funds remain available after funding 2020 and 2021 projects, funding will be extended to Nebraska Investment Finance Authority (NIFA) Low Income Housing Tax Credit (LIHTC) projects that were awarded LIHTC in 2022.

The LIHTC program, Section 42(f)(2) of the Internal Revenue Code of 1986 (Section 42), is a federal tax credit program designed to develop affordable rental housing by utilizing a process that requires collaboration between public and private entities. The resulting housing units must have rents that are affordable to households earning at or below 60% of the Area Median Income (AMI) for the specific county. In addition, all residents of the affordable units must have a gross income that is 60% AMI, or below, for the specific county.

Developments that received LIHTC reservations in 2020 and 2021 have been overwhelmingly impacted by the sudden increase in construction-related costs including, but not limited to, lack of supplies, increase in material costs, shortage of labor, and increase in labor costs, etc. Many of these developments will be unable to move forward without additional assistance. This program will provide successful applicants with a resource in the form of a residual receipt loan that will be fully due and payable at the time of sale or end of the affordability period (whichever first occurs) to allow for the completion of the affordable rental housing developments.

3 MATCHING REQUIREMENTS

No additional matching requirements. The nature of the LIHTC program requires significant investment from other sources, including equity from the LIHTC investors, which will equal at least 60% of the total development costs.

While there is no specific match requirement, applicants must be able to obtain necessary funds to supplement the shortfall between the full gap request and the loan awarded.

4 GRANT AMOUNTS

Due to the nature of the LIHTC program, grants negatively impact the capital stack of a development causing additional tax burden and a likely reduction in tax credits, rendering the development infeasible. Therefore, NIFA will be utilizing residual receipt loans. Loan amounts

will be determined on a per development basis as noted in Section 6 Application and Review Process.

As described in 4.9 of the “*Coronavirus State and Local Fiscal Recovery Funds – Final Rule: Frequently Asked Questions*” dated as of April 27, 2022 (the “SLFRF FAQs”), SLFRF funds may be used to make a loan, provided that the loan supports an activity that is an “eligible use.” (The specific examples given in the SLFRF FAQs include as an eligible use the use of SLFRF funds to subsidize the production of affordable housing units.) Additionally, the SLFRF funds used to make the loan must be obligated by December 31, 2024 and expended by December 31, 2026.

The LIHTC GAP Financing Program with respect to providing loans (with terms of 30-40 years) will require the following:

- that proceeds of the loans may only be used for “costs incurred” in connection with the project between March 3, 2021, and December 31, 2024;
- that all SLFRF/loan funds must be obligated to project owners on or before December 31, 2024;
- that project owners expend all proceeds of the SLFRF/loans no later than December 31, 2026.
- that project owners waive their right to the Qualified Contract process to ensure longer affordability periods

5 LETTER OF INTENT

N/A. NIFA utilized a pre-application process to evaluate the need and feasibility of eligible developments. The pre-applications were submitted on or before July 28, 2022 and required applicants to provide the following information:

- A. Project identification information
- B. Stage of project development (closed with syndicator, percentage of construction completed, etc.)
- C. Explanation of the development capital stack, amount of existing gap, and measures taken to close the gap
- D. Submission of revised development proforma (Exhibit 111)
- E. Acknowledgement that the loan, if provided as requested, will close all remaining gaps and the development will be completed as outlined in the LIHTC application.

Upon the approval of the final program guidelines by the State, NIFA will invite eligible applicants to submit a final, full application.

6 APPLICATION REVIEW & APPROVAL PROCESS

Projects will be assessed on an individual basis and awards will be structured to further the goal of assisting in completion of the greatest number of units/projects, while balancing the importance of geographic distribution of both funds and projects. The overall reasonableness of project costs will be a key consideration.

Upon invitation, an applicant will submit the “LIHTC Gap Financing Program” application (Application) utilizing NIFA’s online application collector. The Application will consist of the following:

- A. Project identification information
- B. Statement of project changes (construction stage, capital stack, etc.) that may have occurred after pre-application submittal
- C. Submittal of the following documentation:
 - a. Site Control—Exhibit 103 (if expired or if the transaction has not closed)
 - b. Subsidies/Public Funds—Exhibit 107 (if expired or changed since conditional reservation)
 - c. Investor Commitment—Exhibits 108/116 if the project has not closed with the investor or, if closed, documentation that the syndicator(s) acknowledge and approve the potential gap financing loan
 - d. Construction and Permanent Financing Forms—Exhibits 109/110 or closing documents
 - e. Final revised development proforma, including SLFRF as a source (Exhibit 111)
 - f. Revised development timeline
 - g. Acknowledgement that the loan, if provided as requested, will close all remaining gaps and the development will be completed as outlined in the LIHTC application, unless otherwise requested and approved by NIFA as part of the LIHTC process.

The Application review process will include NIFA staff reviewing all submitted items and underwriting the applications. Nebraska Department of Economic Development staff will be invited to participate in the review if their schedules allow.

Projects will be initially prioritized using the following criteria, and then overlaid with General Priorities:

- A. Existing projects that received 2020 and 2021 LIHTC will be prioritized. Projects will be evaluated based on whether they:
 - 1. Are shovel ready or currently underway
 - 2. Are still deemed feasible when updated Exhibit 111 is reviewed, meaning all gaps are closed.
 - 3. Have a reasonable per-unit cost in relation to current costs
 - 4. Do not have an overall cost increase greater than one standard deviation from the increase of all project applicants for their year of application.
 - 5. In the event that funds remain after allocating to existing projects from 2020 and 2021, remaining funds may be allocated to 2022 projects through a new application invitation round.

B. General Priorities that will be overlayed on Project Prioritization

1. Returned credits will be redistributed based on underwriting and with applicable tax credit syndication considerations in mind.
2. Funding awards should further the goal of ensuring completion of the highest number of units/projects, considering geographic distribution of projects and reasonableness of overall project costs for an “affordable housing” project.
3. Funding will be provided as a residual receipts loan, to be compliant with ARPA guidelines and so as not to unduly reduce eligible basis for projects. The structure of the loan is subject to change, based on federal legislative updates and the most efficient execution of funding for projects as determined by NIFA.

NIFA staff will determine awards following the application submittal deadline and submit to the Executive Director for approval. NIFA will communicate application results to developers upon the Executive Director’s final approval.

7 GUIDELINES & AWARD MANAGEMENT

Available funds will be distributed to successful applicants through a draw request process upon receipt and filing of appropriate loan documentation, including promissory notes and deeds of trust. The cost of loan closing, including title insurance and recording fees, will be paid by Grantee. Grant funding may be utilized to support the cost of loan closing, including title insurance and recording fees. The deed of trust is expected to be a subordinate lien.

Loans closings will occur following the notification of a grantee’s successful award of grant funds, at a date and location designated by NIFA.

Project Owners/Grantees must ensure that all proceeds of the SLFRF/loans are fully expended no later than December 31, 2026. A complete schedule with required deadlines will be established by each Project Owner/Grantee and approved by NIFA. Grantees will be required to evidence how and when all SLFRF/loan funds have been expended, and to provide such documentation to NIFA upon request in a timely manner.

Asset Manager

NIFA shall be the Asset Manager of the Project, unless a third-party Asset Manager shall have been designated by NIFA upon the execution of this Agreement.

NIFA may appoint a third-party Asset Manager at any time to perform its Asset Management duties hereunder and shall provide the Owner with written notice of any such notice.

Asset Management Duties

The Asset Manager will provide the following services to the Project:

1. Review the use of the proceeds of the LIHTC GAP Financing Program Loan to ensure such proceeds are being spent only in accordance with the requirements of the Program;
2. Review and report to NIFA no less than quarterly on the progress of construction of the Project, specifically any issues that may adversely affect the ability of the Owner to complete the construction of the Project by the Construction Completion Date;

3. Review all quarterly financial and annual audited financial reports;
4. Review all compliance monitoring reports; and
5. Other duties as required by the SLFR Funds.

Compliance Monitoring

During the Affordability Period as set forth in the Land Use Restriction Agreement (LURA), NIFA has adopted compliance monitoring procedures to: (i) monitor developments for noncompliance and (ii) notify the IRS of any noncompliance during the 15-year Compliance Period of which NIFA becomes aware of in accordance with Section 42(m) of the Code, Treasury Regulation §1.42-5 and any other applicable regulations. All development owners must enter into a LURA with NIFA, binding all parties to comply with Section 42 of the Code, Treasury Regulation §1.42-5 and any other applicable regulations, such as the Violence Against Women Act of 2013. Pursuant to the LURA, development owners (or the management agents thereof) are required to attend, on an annual basis, a compliance training seminar sponsored by NIFA. In addition, development owners with items of noncompliance that have not been corrected in a timely fashion in NIFA's sole discretion, may be ineligible to receive future allocations of LIHTC.

The following procedures outline NIFA's plans for compliance monitoring by development owners. Such procedures, together with the covenants and representations contained in the LURA shall constitute the procedures for compliance monitoring by NIFA. (Capitalized terms used below and not otherwise defined shall have the meanings as set forth in the LURA). Additional guidance can be found in the [NIFA Compliance Manual](http://www.nifa.org) located at www.nifa.org.

Tenant Income Certifications

Development owners shall maintain a file for each Qualified Tenant residing in the development (which shall be updated during each year of unit occupancy by the development owner). Each tenant file shall contain a copy of the rent record and a copy of such tenant's executed Application and Tenant Income Certification (the form of which is published on NIFA's website at www.nifa.org or otherwise available from NIFA) as well as supporting documentation, which is subject to independent investigation and verification by NIFA. Each tenant file shall be submitted to NIFA as set forth below or in such other form and manner as may be required by the applicable rules, regulations or policies now or hereafter promulgated by the Department of the Treasury or the IRS.

Annual Owner Certifications

Development owners are required to immediately notify NIFA if, at any time, the residential units in a development are not occupied or available for occupancy as provided in the LURA and LIHTC application as approved by NIFA. Development owners shall prepare and submit, under penalty of perjury, to NIFA, no later than January 31st of each year following the first year in which the minimum set-aside is required to be met, the Owner's Certificate of Continuing Program Compliance (a form of which resides on NIFA's website at www.nifa.org) and submission of Certification Portal (CP) data collected by the development owner.

Record Keeping and Retention

Development owners are required to collect and retain records for each qualified low income building in the development for at least six years after the due date (with extensions) for filing the

federal income tax return for such year. Notwithstanding the above, records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for the filing of the federal income tax return for the last year of the 15-year Compliance Period of the building. Such records shall include for each year during the 15-year Compliance Period the following information pertaining to each building in the development:

- (a) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- (b) The percentage of residential rental units in the building that are Qualified Units;
- (c) The rent charged on each residential rental unit in the building, including any utility allowances;
- (d) The number of occupants in each Qualified Unit and any changes in the number of occupants in each Qualified Unit;
- (e) The Qualified Unit vacancies in the building and information that indicates when, and to whom, the next available units were rented;
- (f) The annual income certification of each Qualified Tenant per Qualified Unit;
- (g) Documentation to support each Qualified Tenant's annual income certification (for example, a copy of the Qualified Tenant's federal income tax return, Forms W-2 or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income is to be calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), and not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, this documentation requirement is satisfied if the public housing authority provides a statement to the development owner declaring that the tenant's income does not exceed the applicable income limit under Section 42(g) of the Code;
- (h) The Eligible Basis and the Qualified Basis of the building at the end of the first year of the Credit Period; and
- (i) The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the development).

Review Process

For each year of the Affordability Period, NIFA will perform a compliance review on the development. Certifications and other information submitted to NIFA (as described above) shall be reviewed for compliance with the requirements of Section 42 of the Code.

On-site Inspection and Tenant File Review

The LURA provides that NIFA, or its designated agent, shall have the right to perform on-site inspections of each building in the development, inspect each Qualified Unit and review the tenant file for each Qualified Unit.

NIFA, or its designated agent, will conduct an on-site inspection of each building in the development and inspect the number of the Qualified Units and review the tenant files for such Qualified Units as required by Section 42 of the Code. On-site inspections and tenant file reviews shall be conducted by the end of the second calendar year following the year in which the last building in the development was placed in service. Thereafter, NIFA, or its designated agent, will

conduct on-site inspections of all buildings in the development and review the tenant files at least once every three years. NIFA shall notify each development owner in advance of any such on-site inspection and review. NIFA shall randomly select which Qualified Units and tenant records will be inspected and reviewed.

Any duly authorized representative of NIFA, the Department of the Treasury or the IRS may inspect the books and records of the development pertaining to the incomes of the Qualified Tenants residing in the development.

In conjunction with each on-site inspection, development owners must provide to NIFA, or its designated agent, any local health, safety or building code violation reports or notices received on the development. Based on the on-site inspection and NIFA's receipt and review of any local health, safety or building code violation reports or notices provided by the owner, NIFA shall determine whether each building in the development and its Qualified Units are suitable for occupancy.

Notification to Owner

In the event NIFA discovers a noncompliance issue with any of the provisions of the LURA or Section 42 of the Code, NIFA will immediately notify the development owner in writing. The development owner shall have 60 days from the issuance of such notice (the "Correction Period") to correct the noncompliance.

Noncompliance includes, but is not limited to, the following: (a) NIFA's failure to receive tenant income certifications, supporting documentation and rent records, (b) noncompliance with any provision of Section 42 of the Code and/or (c) any change in the applicable fraction or eligible basis of the development which would result in a decrease in the Qualified Basis of the development. NIFA shall be authorized and entitled, pursuant to the provisions of the LURA, to perform all acts necessary to comply with the monitoring and notification responsibilities set forth in Section 42(m)(i)(B)(iii) of the Code and any Treasury Regulations promulgated thereunder or other interpretations thereof by the IRS or the courts.